IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1455 OF 2005

M/s.K.C.Chheda & Co. and another. ... Petitioners
Versus.
The Union of India and others. ... Respondents.

Shri Virendra Tulzapurkar with Shri H.N.Thakore and
Ms.Agnes Baradsa i/by M/s.Thakore Jariwala &
Associates for the Petitioner.

Shri Y.R.Mishra with Shri Y.S.Bhate for the Respondents.

CORAM : H.L.GOKHALE, &
ABHAY S. OKA, JJ.

DATED : 30th JANUARY, 2006.

P.C.:

1. Rule. Rule is made returnable forthwith. The Respondents have filed their reply. Counsel for the parties are heard.

2. The Petitioners herein are the owners of a building by name "Mayfair" situated at Veer Nariman Road, Churchgate, Mumbai. Way back in the year 1942 a flat in that building was hired by the Defence Ministry and presently it is under the control of the Western Naval Command, and one of their Officers is occupying this flat.

3. Inasmuch as this flat was so hired more than 60 years ago, the Petitioners entered into necessary correspondence with the Defence Ministry for dehiring

the flat and an order came to be passed on 30th November 2004 which is recorded in the letter of that date to the Petitioners stating that the concerned flat No.21 is decided to be dehired. It was further stated that the arrangement to get the said flat vacated from the present occupant is being made.

4. Inspite of this assurance by the Respondents, the flat was not vacated and therefore, this petition was filed in April 2005. The Respondents have filed their reply and in the reply of one Commodore J. Chaudhary affirmed on 20th December 2005, it has been stated in paragraph 9 that a list has been drawn of the flats which are to be dehired. The Petitioners' flat is at Sr.No.22 in that list and the flats from Sr.No.17 onwards are yet to be dehired. It is, therefore, stated that as and when the Petitioners' turn comes, the flat will be dehired by the Naval authorities. It is, therefore, stated that though the above letter contains the order passed by the Defence Ministry, the Naval authorities have taken up with the Defence Ministry to reconsider the said decision for reason that the accommodation in South Mumbai is not sufficient and therefore, it is necessary to retain the accommodation.

5. Whatever may be representation of the Naval authorities, the fact remains that as of now the decision of the Defence Ministry dated 30th November

2004 very much remains. The Naval authorities are bound to abide by the same and they cannot take a stand to the contrary. Commodore Chaudhary has now filed another affidavit dated 27th January 2006 wherein he has stated that this flat is presently occupied by one Squadron Leader R.Thakaram He is likely to be transferred out of Mumbai in July 2007 and therefore, endeavour will be made by the Respondents to dehire the flat on or before end of July 2007.

6. We have noted this submission of the Respondents in this last affidavit. Having noted the same, we are of the view that the Naval authorities must dehire this flat and hand over possession as soon as this Officer is transferred out. It is quite possible that he may be transferred out even earlier also and in that event, the possession should be handed over to the Petitioners earlier. For any reason, this very officer is required to remain in Mumbai for longer time, we do not think that he should be put to any inconvenience and he may continue in this flat, if required to remain in Mumbai for a period beyond July 2007. However, at the end of that period or in case the officer vacates the flat earlier, no third officer should be inducted in the flat and the same ought to be handed over to the Petitioners.

7. We pass a direction as above and allow this petition with no order as to costs.

8. We grant liberty to both the parties to apply to the Court at the end of July 2007 in case the officer concerned is required to stay longer in the concerned flat.

(H.L.Gokhale, J.)

(Abhay S.Oka, J.)